

SOUTHEAST METRO STORMWATER AUTHORITY  
acting by and through  
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION 19-05

Approval of Right of Entry Agreement with Arapahoe County and Authorization of the Executive Director to Execute said Right of Entry Agreement

WHEREAS, the *Intergovernmental Agreement* (the IGA) that formed SEMSWA provided that one of SEMSWA's purposes was to plan, fund, construct, acquire, and maintain drainage and flood control facilities within its boundaries including within portions of Arapahoe County (County) to the extent of SEMSWA's financial ability.

WHEREAS, County is the owner either in fee or easement of real property within its boundaries which is used for public drainage systems including but not limited to drainage and flood control, regional stormwater facilities and conveyances and NPDES MS4 Permit compliance. (Property).

WHEREAS, SEMSWA desires to obtain County's permission to access and utilize the Property for the purposes of planning, constructing, replacing and maintaining drainage and flood control facilities including but not limited to operating and maintaining regional stormwater facilities and conveyances, carrying out NPDES MS4 Permit activities and responsibilities and for all other necessary drainage and flood control activity.

WHEREAS, the SEMSWA and the County wish to enter into a Right of Entry Agreement whereby the County will allow SEMSWA to access and utilize the Property for the purposes described above and in accordance with the terms of the Right of Entry Agreement.

WHEREAS, a Right of Entry Agreement, which provides for SEMSWA's access and utilization of the Property, has been prepared by SEMSWA staff and legal counsel and reviewed and approved with minor modifications by County legal counsel and is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board Approves the Right of Entry Agreement attached hereto as Exhibit A.
2. The Board authorizes the Executive Director to execute the Right of Entry Agreement attached hereto as Exhibit A.

SOUTHEAST METRO STORMWATER AUTHORITY  
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SEMSWA WATER ACTIVITY ENTERPRISE

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairperson

APPROVED AS TO FORM:  
Attorney for  
Southeast Metro Stormwater Authority

By \_\_\_\_\_  
Edward J. Krisor

**RIGHT OF ENTRY AGREEMENT**

This Right of Entry Agreement (“Right of Entry”) is entered into this \_\_\_\_ day of February, 2019 by and between the Board Of County Commissioners Of The County Of Arapahoe (“County”), a body corporate and politic of the State of Colorado and the Southeast Metro Stormwater Authority acting by and through SEMSWA Water Activity Enterprise (“SEMSWA”) collectively (“Parties”).

WHEREAS, County is the owner either in fee or easement of real property within its boundaries which is used for public drainage systems including but not limited to drainage and flood control, regional stormwater facilities and conveyances and NPDES MS4 Permit compliance. (“Property”).

WHEREAS, such Property is commonly referred to in recorded documents such as Plats as a drainage easement, a utility and drainage easement, a storm drainage easement, a storm sewer easement, a drainage detention pond easement, a drainage detention and water quality pond easement, a drainage / floodplain easement, a non-exclusive permanent floodplain and drainage easement, an easement dedicated by separate document, such as an uniform easement deed and revocable storm drainage license agreement, or as otherwise conveyed to Arapahoe County for purposes of the operation and maintenance of public storm drainage and flood control facilities. This Right Of Entry Agreement applies to all of the above.

WHEREAS, the *Intergovernmental Agreement* (the IGA) that formed SEMSWA provided that one of SEMSWA’s purposes was to plan, fund, construct, acquire, and maintain drainage and flood control facilities within its boundaries including within portions of the County to the extent of SEMSWA’s financial ability.

WHEREAS, SEMSWA desires to obtain County’s permission to access and utilize the Property for the purposes of planning, constructing, and maintaining drainage and flood control facilities including but not limited to operating and maintaining regional stormwater facilities and conveyances, carrying out NPDES MS4 Permit activities and responsibilities and for all other necessary drainage and flood control activity.

WHEREAS, the Parties wish to enter into this Right of Entry Agreement whereby the County will allow SEMSWA to access and utilize the Property for the purposes herein expressed and in accordance with the terms of this Agreement.

NOW, THEREFORE, County and SEMSWA do hereby agree as follows:

1. The County hereby grants to SEMSWA and its agents, employees and contractors the temporary right to access and utilize the Property for the purposes of

planning, constructing, replacing, and maintaining drainage and flood control facilities including but not limited to operating and maintaining regional stormwater facilities and conveyances, carrying out NPDES MS4 Permit activities and responsibilities and for all other necessary drainage and flood control activity all within portions of the County located within the boundaries of SEMSWA. SEMSWA shall provide the County, upon request, with copies of its internal records regarding work performed on the Property.

2. This Right of Entry Agreement will terminate upon the conveyance to SEMSWA, either in fee or easement, of the Property or at such other time as deemed necessary by the County in the interest of public health and safety.

3. This Right of Entry Agreement is subordinate to all prior rights and obligations of County in the Property, except that County shall grant no rights inconsistent with the reasonable exercise by SEMSWA of its rights under this Right of Entry Agreement.

4. SEMSWA shall not permit to be placed against the Property, or any part thereof, any liens or other encumbrances with regard to SEMSWA's actions upon the Property. SEMSWA agrees to hold County harmless, to the extent permitted by law, for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens or encumbrances which might be filed against the Property.

5. SEMSWA hereby agrees, to the extent permitted by law, to indemnify, defend, assume all liability for and hold harmless County and its officers, employees, agents and representatives from all actions, claims, suits, penalties, obligations, liabilities, damages to property, environmental claims, or injuries to persons, which are caused by the SEMSWA's activities pursuant to this Right of Entry Agreement or arising out of or in connection with such activities, whether such activities or performance thereof is by SEMSWA or anyone directly or indirectly employed or under contract with SEMSWA, and whether such damage or claim shall accrue or be discovered before or after the termination of this Right of Entry Agreement.

6. If SEMSWA in the course of exercising its rights hereunder damages any facilities of County located on the Property, SEMSWA will promptly notify the County of such damage and promptly repair said facilities to the County's reasonable satisfaction.

7. SEMSWA's planning, constructing, and maintaining of drainage and flood control facilities including but not limited to operating and maintaining regional stormwater facilities and conveyances, carrying out NPDES MS4 Permit activities and responsibilities and for all other necessary drainage and flood control activity all within portions of the County located within the boundaries of SEMSWA are being performed as the successor, assign, or agent of the County, and shall be performed in accordance with the provisions of the IGA.

8. SEMSWA shall, in all activities undertaken pursuant to this Right of Entry Agreement, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, SEMSWA, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for any activities SEMSWA desires to conduct or have conducted pursuant to this Right of Entry Agreement.

9. The County and its representatives, employees, agents or independent contractors may enter and inspect the Property or any portion thereof or any improvements thereon at any time and from time to time to verify SEMSWA's compliance with the terms of this Right of Entry Agreement.

10. It is expressly understood that this Right of Entry Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other real property interest in the Property to SEMSWA. This Right of Entry Agreement is not exclusive and County specifically reserves the right to grant other rights of entry in regard to the Property as long as the same do not interfere with the rights granted to SEMSWA herein.

11. In the event of a dispute between the parties with respect to the terms or conditions of this Right of Entry Agreement, the prevailing party shall be entitled to collect from the other its reasonable attorneys' fees as established by final order of the highest court presiding over such dispute.

IN WITNESS WHEREOF, the Parties hereto have executed this Right of Entry Agreement on the date first written above.

Board Of County Commissioners  
Of The County Of Arapahoe

By: \_\_\_\_\_  
Jeff Baker, Chair

ATTEST:

Approved as to Form:

\_\_\_\_\_  
County Clerk or Deputy County Clerk

\_\_\_\_\_  
For County Attorney's Office

Southeast Metro Stormwater Authority

By: \_\_\_\_\_  
Paul R. Danley, Executive Director